

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA**

**EDUCATION CORPORATION OF)
AMERICA, VIRGINIA COLLEGE,)
LLC, and NEW ENGLAND)
COLLEGE OF BUSINESS AND)
FINANCE, LLC,)**

Plaintiffs,

v.

**UNITED STATES DEPARTMENT)
OF EDUCATION and BETSY)
DEVOS, in her official capacity as)
Secretary of Education,)**

Defendants.

**Case No.
2:18-cv-01698-AKK**

**PLAINTIFFS' MOTION TO FILE UNDER SEAL THE
DECLARATION OF KERENNA JONES**

Plaintiffs Education Corporation of America, Virginia College, LLC and New England College of Business and Finance, LLC (“ECA” or “Plaintiffs”), by and through their undersigned counsel, and respectfully move this Court for permission to file under seal the Declaration of Kerenna Jones and the exhibits thereto, which are being filed concurrently with Plaintiffs’ response to the *Amicus Curiae* Brief of Southern Poverty Law Center, Project on Predatory Student Lending, Gillian Lange, and Natasha Dover (collectively, “*Amici*”) in Opposition to Plaintiffs’ Motion for Preliminary Injunction. In support of this Motion, Plaintiffs state as follows:

1. The Family Educational Rights and Privacy Act (“FERPA”) protects the privacy of a student’s educational records, and prohibits the disclosure of such records absent the student’s consent.

2. Specifically, FERPA prohibits educational institutions from producing to third parties or otherwise making public a student’s “personally identifiable information” that is contained in “education records,” except in limited circumstances. 34 C.F.R. §§ 99.10, 99.30.

3. “Personally identifiable information” includes a student’s name as well as any indirect identifiers “that, alone or in combination, [are] linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.” 34 C.F.R. § 99.3. “Education records” include any record that directly relates to the student and is maintained by educational institutions. 34 C.F.R. § 99.3.

4. One exception under FERPA entitles an institution to disclosure to the court a student’s education records that are relevant for the institution “to defend itself” in a civil action brought by that student. 34 C.F.R. § 99.31(9)(iii)(B). However, this exception does not extend to disclosing to the court or to the public information of other students who are named or are identifiable but are not parties to a civil action.

5. In this case, Plaintiffs are submitting the Declaration of Kerenna Jones and supporting exhibits thereto which identify the names and other personally identifiable information of certain former students of Virginia College. In addition, the exhibits supporting the Declaration of Kerenna Jones amount to “education records” within the meaning of FERPA that contain sensitive and private information about the same students.

6. The exception to FERPA that authorizes an institution’s disclosure of a student’s personally identifiable information contained in education records when that student initiates a civil action against the institution does not apply in this case because the relevant students have not brought a civil action against Plaintiffs.

WHEREFORE, premises considered, Plaintiffs respectfully request that this Court grant this Motion to File Under Seal the Declaration of Kerenna Jones, and exhibits thereto, which are being filed concurrently with Plaintiffs’ response to the *Amicus Curiae* Brief in Opposition to Plaintiffs’ Motion for Preliminary Injunction.

Respectfully submitted this the 2nd day of November 2018.

/s/ Ollie A. “Tres” Cleveland, III

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system on this the 2nd day of November 2018, which will send e-mail notification to all counsel of record.

/s/ Ollie A. "Tres" Cleveland, III

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